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# In the Supreme Court of the United States

OCTOBER TERM, 1967

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No. 92

JAMES H. HARRIS, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## BRIEF FOR THE UNITED STATES

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### OPINIONS BELOW

The opinions in the court of appeals (R. 132–138, 153–157) are reported at 370 F. 2d 477.

### JURISDICTION

The judgment of the court of appeals was entered on December 6, 1966 (R. 158). The petition for a writ of certiorari was filed on December 28, 1966, and was granted on April 17, 1967 (386 U.S. 1003). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

### QUESTION PRESENTED

Whether an automobile registration card, lodged beneath the door of petitioner's automobile, and exposed to the full view of a police officer as he opened

the door of a legally seized automobile for the sole purpose of closing a window, was properly seized and admitted in evidence.

## REGULATION INVOLVED

General Order No. 10 of the Metropolitan Police Department of the District of Columbia is printed in the Appendix, *infra*, pp. 15–18.

## STATEMENT

Petitioner was convicted, after a jury trial in the United States District Court for the District of Columbia, of robbery in violation of 22 D.C. Code 2901. On March 5, 1965, he was sentenced to imprisonment for 2 to 7 years.

The only issue arises from the admission in evidence of the automobile registration card of the robbery victim, which was discovered in petitioner's car.

The evidence showed that the perpetrators of a midnight street "yoke" robbery had been seen fleeing the scene in a precisely described car. The following morning, Metropolitan Police Department Detective Baker was given a description of the car, including the license number, and assigned to investigate the crime. He determined that the car was owned by James Harris and he traced it to the vicinity of petitioner's address. There, at 1:30 p.m., he arrested petitioner as the latter was seating himself behind the wheel of the vehicle (R. 18–21). Ordering petitioner from the car, Detective Baker looked briefly through the open driver's door into the interior, front and back, for weapons. He reached under the front seat

on that side. He did not enter the glove compartment or the trunk or otherwise search (R. 34, 43). He observed only an open can of beer (R. 33).

A few minutes after the arrest, Baker radioed a request for a police crane to tow petitioner's automobile to the precinct since, in view of its identification as the "getaway" car, he intended to impound it as evidence (R. 20). When he left the scene in a cruiser to transport petitioner to his precinct, the automobile was left unlocked with its windows open; but a police unit from another precinct remained on hand to assist the crane (R. 29, 31, 33).

Detective Baker reached his precinct with petitioner at approximately 1:45 p.m. (R. 27). At 3 p.m., a crane operator appeared at the precinct with a receipt for the impounded automobile, which Baker signed. The operator said that he had placed the car on a back lot near the "bushes" (a lot bordered by two fenced driveways, the precinct building, and a four foot hedge (R. 28, 29)) and that, although it was raining, he had not closed the windows because "he didn't want to disturb any possible chance of fingerprints or get involved in the case" (R. 22). Baker replied that he would raise the windows because, following a procedure required by Metropolitan Police regulations, Appendix, *infra*, p. 17, he intended to place on the vehicle a "property tag," *i.e.*, identifying tag listing information as to ownership and reason for impounding.

Minutes later,[1] the officer went to the impounding lot for the purpose of placing a property tag on the vehicle, removing all valuables, rolling up all windows and locking the car (R. 76–77). He first went to the driver's side and tied the tag on the steering wheel (R. 77). Then, in a crouched position with his knee on the driver's seat (R. 85) he looked briefly at the rear seat and floor and leaned over to open and check the unlocked glove compartment and the sun visors (R. 77–78). He walked around to the back-passenger door, opened it and rolled up the window. He was repeating this process with the front-passenger door, for the sole purpose of securing the window and door, when he saw the card bearing the name of the robbery victim lying face-up on the metal stripping over which the door closes (R. 23–24). He re-entered the precinct, brought petitioner back to the car and heard him disclaim knowledge of how the card could have been found there. Baker then took the card inside, registered it in a "property book" and enclosed it in an envelope to be forwarded to the Department's Chief Property Clerk, where, under the regulations, all valuables removed from impounded automobiles must be lodged (R. 24–25).

After the card had been registered, the officer went back to the car, unlocked the trunk, finished winding up the windows and locked the car (R. 81, 84). He made a thorough search of the vehicle the

[1] The exact circumstances were developed in questioning by the court after both direct and cross-examination had failed to establish the precise sequence of events.

following day after obtaining a search warrant (R. 82).

In denying the motion to suppress, the district court observed that, in the peculiar factual context presented, he was not called upon to consider the broad question of the right of police officers to search motor vehicles. He ruled that the evidence was admissible because the officer, at the time the card was exposed to open and full view, was acting only to secure the window. Alternatively, he ruled that the existence of the police regulation requiring an inventory distinguished this case from *Preston* v. *United States,* 376 U.S. 364 (R. 125–131).

On appeal, a panel of the court of appeals reversed, holding that the police regulation could not legalize the entry which, it found, was an unlawful search under *Preston.* It rejected an alternative argument by the government that, as the automobile was properly seized as an instrumentality of crime, it was unnecessary to obtain a warrant to examine it. (R. 132–138). A petition for rehearing *en banc* was granted, and the full court of appeals affirmed the conviction (two judges dissenting) (R. 153–157). The court noted that, in view of the district court's finding, in which it concurred, that the card was not discovered as the result of a search, it was not called upon to decide the constitutional issues.

## SUMMARY OF ARGUMENT

Petitioner's car, having been positively identified as the "getaway" car in a robbery, was impounded by the District of Columbia police. It is undisputed

that the impounding was lawful. Later, pursuant to police department regulations, an officer scanned the car's interior for loose articles, which under the regulations must be secured for the owner's protection. Having completed this "inventory search," the officer proceeded to roll up the car windows to protect the interior against the rain which had begun to fall. In opening the right front door in order to roll up its window, he exposed to plain view a piece of incriminating evidence. The issue is whether that evidence was admissible in petitioner's criminal trial without violating the Fourth Amendment. We submit that it was.

This Court normally will not disturb the concurrent factual findings of lower federal courts—least of all, where the result would be to precipitate a constitutional question. Here, both lower courts found that the evidence was discovered not in a search of the car, but as an incidental consequence of the officer's opening a door to roll up the window after he had completed the inventory search. The car was in the custody of the police. They had a duty to protect its interior from rain. It was solely in discharge of that duty that the evidence was uncovered. Since the evidence was not the product of a search, there is no Fourth Amendment issue.

Assuming, contrary to the findings of the courts below, that the evidence was seized as an incident of the inventory search, it is still, in our view, admissible. A search of a vehicle may be reasonable although it is not pursuant to warrant or incident

to a lawful arrest, and regulations like that of the District of Columbia police force which require the routine searching of the interior of impounded automobiles to secure any loose articles that the owner may have left in the car are plainly reasonable. Unless the police took steps to find such property and remove it to safekeeping, they would be open to charges of negligence. The duty to conduct an inventory search (at least for loose articles) would seem, therefore, to be an inescapable incident of impounding a vehicle; and where, as here, the impounding is lawful, so, we submit, is the search.

Requiring a warrant for such searches is not feasible, since loose articles could disappear during the time needed to obtain the warrant. Nor, we suggest, is a warrant requirement necessary for the protection of individual rights. Securing the removable contents of the vehicle is reasonable and appropriate for the owner's protection in every instance where a vehicle is impounded. Since it is a proper routine procedure, regardless of circumstances, no useful purpose would be served by requiring that a magistrate determine its appropriateness in individual cases.

## ARGUMENT

### I

### THE CHALLENGED EVIDENCE WAS NOT UNCOVERED IN THE COURSE OF A "SEARCH", AND THE FOURTH AMENDMENT, THEREFORE, DOES NOT BAR ITS ADMISSION

Let us suppose a case in which a policeman, quite by chance, comes upon a burning car. Opening the car door to see whether there are any occupants, he no-

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tices a gun. He seizes it and it is later introduced into evidence in a criminal trial. All would agree, surely, that on these facts the gun had not been discovered in the course of a search (see *Ker* v. *California,* 374 U.S. 23, 42–43; *United States* v. *Lee,* 274 U.S. 559, 563; *Hester* v. *United States,* 265 U.S. 57) and that its seizure and introduction into evidence raised no question under the Fourth Amendment (see *Harris* v. *United States,* 331 U.S. 145).

The facts, as found by the district court with the concurrence of seven judges of the Court of Appeals for the District of Columbia Circuit, are essentially no different from the hypothetical example posed. There is no warrant for disturbing these concurrent findings of fact (*Berenyi* v. *Immigration and Naturalization Service,* 385 U.S. 630, 635, 636; *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.,* 336 U.S. 271, 275), thereby reaching, unnecessarily, grave constitutional questions (*e.g., Rescue Army* v. *Municipal Court,* 331 U.S. 549, 568–575).

No one questions that petitioner's car was lawfully impounded,[2] or that it was proper for the officer to roll up the windows of the car lawfully in his custody in order to secure its interior from the rain that was falling. In opening the right front door for the sole purpose of rolling up the window of that door, he quite accidentally discovered the incriminating evidence (the robbery victim's automobile registration).

[2] The vehicle, having been positively identified as the "get-away" car of the robbers, was impounded as evidence. The propriety of seizing mere evidence is now established, *Warden* v. *Hayden,* 387 U.S. 294, but in all events the car was not mere evidence; it was also an instrumentality of the crime.

in plain view in the doorjamb. He had no purpose to search there. Earlier, he had inspected the interior of the vehicle for loose articles that he was required to secure for the owner's protection, but that inspection, (which did not reveal the registration card) had already been completed (he had finished searching) when he opened the door, exposing the evidence to view.

Petitioner argues that the disentanglement of mixed motives presents formidable administrative problems. This may be so, but the issue does not arise here. The finding of the lower courts is that the officer had a single motive in opening the door in question—to roll up the window. We need not consider the legal consequences had this purpose been accompanied by a design to inspect further the automobile's interior.[3]

## II

### ALTERNATIVELY, THE SEIZURE OF LOOSE ARTICLES IN AN AUTOMOBILE INTERIOR IS A VALID INCIDENT TO A LAWFUL IMPOUNDING OF THE VEHICLE

If, contrary to our submission, the evidence was uncovered in a search, it does not follow that it is inadmissible. In our view, a search of an automobile interior, at least where limited to loose property, is clearly reasonable as an incident to a lawful impounding of the vehicle. And a vehicle search which is reasonable does not violate the Fourth Amendment, albeit no warrant was obtained and the search was not incident to a valid arrest. See, *e.g.*, *Cooper* v. *California*,

[3] Nor is it relevant that after, and because, he found the incriminating evidence the officer decided to search the vehicle further, that evidence was found before any such motive arose.

386 U.S. 58; *Carroll* v. *United States,* 267 U.S. 132; cf. *Preston v. United States,* 376 U.S. 364.

In inspecting the interior of petitioner's car, Officer Baker was complying with the Metropolitan Police Department's regulation (reprinted in pertinent part in the Appendix, *infra,* pp. 15–18) concerning the recording, handling and disposition of all property coming into the custody of the police department, including motor vehicles.[4] With respect to motor vehicles intended to be impounded, the officer is instructed, among other things, to arrange for a crane to remove the vehicle to the nearest police station or to a designated location. He is instructed to note carefully all damage, and, once the vehicle is delivered, to check the description against stolen automobile records. He is also required to fill out a "Vehicle Impounding Sheet", itemizing any damage, missing accessories, or property removed from the vehicle, and to attach a "property tag" to the steering wheel listing the date, the make of car and tag number, the violation, and the identity of the impounding officer. The regulation specifies further that the officer is to

[4] In addition to sections dealing with motor vehicles, and property removed therefrom, the police order specifically covers instructions for handling prisoner's personal property, evidence or suspected proceeds of crime, abandoned property, found property, estates of deceased persons, property of alleged insane persons or persons taken to hospitals, property turned over to police at the scene of fire and disaster, bicycles, firearms, suitcases, etc.

While the section dealing with impounded vehicles speaks of a traffic violation notice (Appendix, *infra*, pp. 17–18), it has been interpreted as outlining procedure for all automobiles coming into the custody of the Department.

search the vehicle thoroughly, "whether impounded, stolen, abandoned, or taken from a prisoner", and to "remove all property therefrom" and see that it is recorded and properly safeguarded.[5]

Certainly, insofar as it directs the police to look for and secure loose property in the automobile's interior when the car is impounded, this regulation is reasonable. It would be negligent for the temporary custodian to allow valuable property to remain exposed in the car's interior[6] and might subject the police to claims of theft of the car's contents. Accordingly, such regulations are commonplace in police administration throughout the United States, and—not surprisingly—it has been held that articles found as a result of such routine inspections are not the product of an unreasonable search. See *Heffley* v. *State,* 423 P. 2d 666 (Ney.); *People* v. *Ortiz,* 147 Cal. App. 2d 248, 305 P. 2d 145; *People* v. *Simpson,* 170 Cal. App. 2d 524, 339 P. 2d 156; *State* v. *Michaels,* 60 Wash. 2d 638, 374 P. 2d 989; *State* v. *Olsen,* 43 Wash. 2d 726, 263 P. 2d 824.

The reasonableness of the regulation is underscored by the dimensions of the problem of impounded auto-

[5] If the trunk or glove compartment is locked, and no keys are available, he is not required to search there if it appears that the vehicle may be reclaimed within a short period. If the vehicle is impounded in circumstances that would indicate custody for a "considerable period", the officer is to contact the Property Clerk for instructions.

[6] Under a 1962 provision of Title 4 of the District of Columbia Code (§ 4–160a), the District and its employees are liable, with respect to property lawfully in its custody, for damage "as a result of gross negligence in the removal, transportation, or storage of such property."

mobiles that the District of Columbia faces. We are advised that, during 1966, the Metropolitan Police Department impounded (for sundry reasons) a total of 14,500 motor vehicles. These vehicles are generally stored out of doors, and 24-hour guard protection is not possible. The ease with which locked cars can be opened and their contents stolen is well known. It is thus a reasonable precaution for the police to inventory the contents of an impounded vehicle as soon as possible.

It would be impracticable to secure a warrant, for loose items could well disappear in the time necessary to obtain it, taken either by confederates of the accused (see *Price* v. *United States,* 348 F. 2d 68, 69 (C.A.D.C.), certiorari denied, 382 U.S. 888) or by thieves. Moreover, since the inventory search is a reasonable routine procedure, applicable whenever and under whatever circumstances a vehicle is seized, no purpose would be served by insisting upon anterior justification before a magistrate of each such search. If inventory searches were reasonable in some circumstances but not others, the magistrate would have a function. Our point, however, is that securing the removable contents of the vehicle is a *routine* procedure, appropriately followed in every case where a vehicle comes into the custody of the police. Besides being unnecessary, a warrant requirement would be very burdensome, in view of the vast number of impounded vehicles in every jurisdiction each year.

Petitioner suggests that, whatever the general reasonableness of inventory searches of impounded cars, a distinction should be recognized in cases like this

where the car is seized because it was involved in a crime. But this assumes, unsoundly in our view, that an individual suspected of crime is less entitled than one not so suspected to the protection of property that he might have left in his car when it was seized. Moreover, to the extent that an inventory search may be viewed as an encroachment on the car owner's privacy, surely the innocent owner is entitled to the same protection as one who used the car for criminal purposes.

Thus far, we have confined our argument to vehicle searches for loose articles, designed to protect the owner. We could argue, more broadly, that since petitioner's automobile was lawfully seized as an instrumentality of crime and was thus properly in the custody of the police, any search of its contents—even one specifically designed to obtain incriminating evidence—is permissible. In *Cooper* v. *California*, 386 U.S. 58, this Court upheld the general search without warrant of an automobile seized by police for use as evidence in a forfeiture proceeding. The reasoning of that decision could be applied here, since here, too, "[t]heir subsequent search of the car * * * was closely related to the reason petitioner was arrested, the reason his car had been impounded, and the reason it was being retained." 386 U.S. at 61. We need not go so far in this case. Here, there was no thoroughgoing search of the vehicle, but a casual inspection designed solely to secure loose articles for the benefit of the owner—an inspection that seems to us a wholly reasonable incident of the lawful impounding of a vehicle.

Accordingly, even if the Court rejects the concurrent findings of fact which negate any "search", there is no basis for invalidating the conviction.

## CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

RALPH S. SPRITZER,
*Acting Solicitor General.*
FRED M. VINSON, JR.,
*Assistant Attorney General.*
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OCTOBER 1967.

# APPENDIX

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT,
*March 21, 1958.*

GENERAL ORDER No. 10
Series 1958

SUBJECT: Manual of instructions relating to procedure in the recording, handling and disposition of various types of property coming into the custody of the Metropolitan Police Department.

TO THE FORCE:

The contents of this order are designed to serve as a manual of instructions for members of the department relating to the recording, handling and disposition of the various types of property coming into the custody of this department. It shall be understood that this order does not cover every exigency which may arise in relation to property, however, where doubt exists as to the proper method of handling property, and the condition is not covered by the provisions of this order, you shall contact the Property Clerk or his agent for advice and guidance. Sufficient copies of this order are furnished to commanding officers in order that at least two copies may be bound in book form and placed in the station clerk's office. It shall be the responsibility of commanding officers to see that members of their commands are familiar with the provisions of this order.

* * * * * * *

11. Motor Vehicles In Possession of Police

When it becomes necessary for an officer to impound a vehicle, the officer shall call the Police Service Shop, phone NAtional 8–4000, extension 344, and ask the person in charge of the shop to dispatch a crane to the location from which the vehicle is to be impounded. If a crane responds immediately, the officer shall await its arrival. If the crane will be delayed, officer shall arrange to meet the crane at the location needed at some specified time. The officer shall examine the vehicle to be impounded and carefully take note of all damage observed.

Upon the arrival of the crane, the officer shall give a Traffic Violation Notice containing all necessary information to the operator of the crane. The vehicle will then be removed to the nearest police station or designated location, and the operator of the crane shall deliver the Traffic Violation Notice to the station clerk on duty in that unit. Before leaving the vehicle, the operator of the crane shall inspect the vehicle and note all damage and report such information to the station clerk.

After the vehicle has been removed from the location of the violation, the impounding officer shall, without unnecessary delay, proceed to the station to which the vehicle was removed and shall notify the teletype room, extension 311, giving the year, make, model, and tag number of the vehicle, and the reason for which impounded. Upon receipt of this message, the teletype clerk shall immediately check all current teletype messages and stolen automobile records in order that appropriate action may be taken in the event the impounded vehicle has been reported stolen.

The impounding officer shall, after complying with the above, completely fill out PD 172 (Vehicle Im-

pounding Sheet) in detail, making certain to itemize any damage to the vehicle, any missing accessories, or any property removed from the vehicle. The Traffic Violation Notice shall then be attached to that form. The impounding officer shall fill out a property tag giving the date, violation, location from which the vehicle was removed, the impounding officer's name and precinct, and, if available, the name and address of the owner and shall attach the tag to the steering wheel of the vehicle.

In freezing weather or at periods of the year when radiators or motor blocks might freeze, the impounding officer shall drain the radiator and block unless (a) he has been informed by the owner or driver of the vehicle that there is sufficient anti-freeze solution in the vehicle to insure against possible damage by freezing, or (b) there is attached to the vehicle a dated tag indicating that the vehicle has been equipped with a permanent type anti-freeze for the winter season then current.

* * * * *

12. PROPERTY REMOVED FROM IMPOUNDED VEHICLES

When a vehicle is brought to a station, whether impounded, stolen, abandoned, or taken from a prisoner, it shall be the responsibility of the officer who takes the vehicle in charge to thoroughly search such vehicle, including the glove compartment and trunk, and remove all property therefrom. He shall be held responsible for seeing that all such property is recorded and properly safeguarded.

When the trunk or glove compartments of impounded vehicles are locked and no keys are available, it will not be necessary to search those compartments at the time of impounding if the vehicle is impounded under circumstances which indicate that it will be reclaimed by the owner within a short time

(impoundings for rush hour parking violations, etc.). On the other hand, if the vehicle is impounded under circumstances which indicate that it will be in custody of the police for a considerable period, and in any event prior to forwarding a property return or the vehicle to the Property Clerk, the Property Clerk or his agent shall be contacted for instructions regarding the method to be used in opening and searching locked trunk or glove compartments.

When property is found in a vehicle, separate entry shall be made on PD 82, listing such property as "Removed From An Automobile," and if the vehicle is later turned over to the Property Clerk, a separate return shall be submitted on such property.

If the property is turned over to the owner, when circumstances permit such return or after permission for such return has been granted by the Property Clerk or his agent, a receipt shall be taken for such property in the same manner as for the automobile.

* * * * * *

Motor vehicles in custody of the Property Clerk create serious problems of processing and storage. Supervisory officials shall give continuing attention to impounded vehicles to insure that every authorized effort is made by impounding officers to cause lawful owners to obtain release of such vehicles.

District inspectors shall, periodically, inspect the property books of precincts within their districts and take appropriate action when any irregularities are noted.

By direction of the Chief of Police:

HOWARD V. COVELL,
*Deputy Chief of Police,*
*Executive Officer.*

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